



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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December 6, 2013

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSP)
US EPA Headquarters
1200 Pennsylvania Avenue, NW
Mail Code: 7101M
Washington, DC 20460

RE: Reassessment of PCB Use Authorizations

Dear Mr. Jones:

The Columbia River Inter-Tribal Fish Commission (CRITFC) appreciates that EPA is revisiting the issue of authorized uses of polychlorinated biphenyls (PCBs) in regulations that were first promulgated more than thirty years ago. For the CRITFC-member tribes and their 20,000-plus enrolled members, toxins such as PCBs are of significant concern because of their chemical stability and propensity to persist in the environment, particularly in water, for many years. PCBs have made their way into the aquatic food chain that is integral to tribal First Foods, which tribal people have depended on for sustenance since time immemorial. Water, salmon and the other First Foods are fundamental to the CRITFC tribes' religion, culture and way of life. In addition, tribal treaties with the United States guaranteed that not only would salmon exist for us to take, but that those fish would be healthy and untainted by toxic pollutants.

PCBs are still available and are still contaminating the environment. Millions of pounds of PCB-contaminated liquids remain in aging, enclosed containers. Equally alarming is the fact that PCBs continue to be used or allowed in commercial products. Considering that PCBs have been found in dangerous concentrations in the Columbia River where Indians continue to actively fish, EPA's continued authorization of commercial PCB use is unsupportable and unacceptable. EPA has not fully or appropriately considered tribal rights, interests and concerns in this rulemaking. The agency has a trust responsibility to tribal governments¹, including a duty to safeguard tribal trust resources, and must consider the entire range of impacts to tribal communities of rules and regulations promulgated under the Toxic Substances Control Act (TSCA).

When the "PCB Reassessment of Use Authorizations" was first published in the Federal Register in 2010, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) submitted comments in a letter dated August 20, 2010 (enclosed) describing the impacts of PCBs on tribal fisheries and tribal people. The CTUIR requested that EPA specifically consider a reassessment

¹ See, e.g., *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981).

of the 50 ppm level for excluded PCB products in the rulemaking. EPA, however, did not consult with any tribes to our knowledge and issued an agency notice, dated April 5, 2013 (EPA-HQ-OPPT-2012-0902; FRL-9382-9), that reconfirmed regulations allowing materials containing less than 50 ppm of PCBs to be categorized as "excluded PCB products." 521

As the 2010 CTUIR letter clearly states, trace levels of PCBs currently permitted by EPA affect tribal people and resources. In addition, states and tribes in the Pacific Northwest have established, or are in the process of establishing, water quality standards using human health criteria that more accurately reflect true tribal fish consumption. Compliance with these standards that have or will require EPA approval will be difficult if not impossible if trace amounts of PCBs are allowed in certain commercial products.

CRITFC looks forward to discussing the rulemaking during the December 12, 2013, conference call.² For a meaningful discussion of the reauthorization rulemaking, we ask that EPA specifically address inadvertent generation of PCBs, a path forward to resolve this issue, and a timeline for when TSCA provisions allowing low levels of PCB can be ultimately eliminated. Tribal staff will be able to provide additional information on the disproportionate environmental and health impacts that PCB use and distribution have on our communities.

Thank you for your attention to our comments and suggestions. If you have any further questions please contact me or Aja DeCoteau at 503-238-0667.

Sincerely,



Joel Moffett
Chairman

Enclosure

Cc: Wendy Cleland-Hamnett, Director, EPA Office of Pollution Prevention and Toxics
JoAnn Chase, Director, American Indian Environmental Office
Caren Robinson, Tribal Consultation Advisor, Office of Chemical Safety & Pollution Prevention
Nancy Stoner, Acting Assistant Administrator, EPA Office of Water

² Please note that while we appreciate EPA arranging this discussion, a multi-party group conference call does not constitute appropriate government-to-government consultation. We encourage the agency to consider individual formal consultation with each of the tribes that desire it as soon as is practicable.